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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,837	01/15/2004	Matthias Konrad	03/004 MFE	5083

38263 7590 04/19/2005

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EXAMINER

TRAN, THAO T

ART UNIT PAPER NUMBER

1711

DATE MAILED: 04/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/757,837	Applicant(s) KONRAD ET AL.	
	Examiner Thao T. Tran	Art Unit 1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2004.  
 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-5,7-12,14 and 16 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 1-5,7-12,14 and 16 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☒ All    b) ☐ Some \*    c) ☐ None of:  
         1. ☒ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. This is in response to the Amendments filed 12/27/2004.
2. Claims 1-5, 7-12, 14, and 16 are currently pending in this application. Claims 6, 13, and 15 have been canceled. Claims 1-2 and 7-9 have been amended.

### ***Claim Objections***

3. Claim 11 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 11 repeats the same limitation of the polyester as recited in claim 1.

### ***Claim Rejections - 35 USC § 112***

4. In view of the prior Office action of 10/01/2004, the rejection of claim 11, under 35 U.S.C. 112, second paragraph, has been withdrawn due to the Amendments made in claim 1.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-14 and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Shelby et al. (US Pat. 6,562,276).

In regards to claims 1-4, 6-11, and 16, Shelby teaches a multilayer film for package material, the multilayer film comprising 5 layers in a sequence of A/B/C/B/A; wherein A's and C are structural layers and B's are performance layer with gas barrier properties (see col. 13, ln.16, 45-47). Each of the structural layers A's and C contains thermoplastic polyesters comprising a mixture of repeat units of terephthalic acid, isophthalic acid, and ethylene glycol (see col. 18, ln. 1-20). Each of the performance layers B's comprises poly(m-xylenedipamide) and polyesters (see col. 19, ln. 1-11, 46-47).

In regards to claim 2, Shelby teaches the layers B contain at least 70% mol of m-xylylene diamine, which appears to read on the instantly claimed range.

In regards to claims 1, 12 and 14, since Shelby teaches the same chemical composition of the multilayer film, Shelby's invention would inherently have the same properties, such as melt viscosity, gloss, interlaminar adhesion, and oxygen transmission, as those in the presently claimed invention.

***Response to Arguments***

7. Applicant's arguments filed 12/ 27/1004 have been fully considered but they are not persuasive.

Throughout the Remarks, Applicants allege that the reference of Shelby differs from the presently claimed invention because Shelby does not teach the same oxygen transmission and interlaminar adhesion. Applicants contend that Shelby is directed to resin viscosities, elasticity parameters, and process conditions such that interfacial stresses between layers are eliminated in the resulting article. However, as pointed out in paragraph 6 and in the prior Office action, since Shelby teaches the same laminate with the same chemical compositions, Shelby's laminate would inherently have the same properties, such as oxygen transmission and interlaminar adhesion, as presently claimed. Furthermore, Shelby teaches that to reduce interfacial stresses between layers would reduce chevrons or interfacial instability (see col. 6, ln. 1-2). Thus, Shelby's invention is also directed to increasing interlaminar adhesion.

***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thao T. Tran whose telephone number is 571-272-1080. The examiner can normally be reached on Monday-Friday, from 8:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

tt  
April 15, 2005

  
**THAO T. TRAN**  
**PATENT EXAMINER**